



# PUBLIC NOTICE

Federal Communications Commission  
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**DA 04-3275**  
**Released: October 18, 2004**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF FLORIDA DIGITAL NETWORK, INC., TO ITC^DELTACOM, INC.**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 04-392**

**Comments Due: November 1, 2004**

**Reply Comments Due: November 8, 2004**

On October 1, 2004, ITC^DeltaCom, Inc. ("ITCD") and Florida Digital Network, Inc. (FDN Inc.) (collectively, Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting approval to transfer control of FDN, Inc. to ITCD.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because the transferee, ITCD, will have a market share in the interstate interexchange market of less than 10 percent, the transferee will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction, and no party to this Application is dominant with respect to any service.<sup>3</sup>

FDN Inc., a Delaware corporation, provides business class communications services in

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<sup>1</sup> 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants are also filing an application for consent to transfer authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications. In addition, ITCD is separately seeking Commission approval to transfer control of Network Telephone Corporation to ITCD. *See Comments Invited on Application for Transfer of Control of Network Telephone Corporation, to ITC^DeltaCom, Inc.*, Public Notice, WC Docket No. 04-393, DA 04-3275 (rel. Oct. \_\_, 2004).

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i).

seven major markets in Florida and Georgia, together with its operating subsidiary, Southern Digital Network, Inc. (SDN) (collectively, FDN).<sup>4</sup> With more than 225,000 business telephone and Internet lines, FDN offers an extensive array of communications services, including local and long distance voice, high-speed Internet access, virtual private network, web hosting, and integrated voice and data solutions to businesses. FDN also provides telecommunications and other services to approximately 5,000 residential customers.

ITCD, a Delaware corporation, provides integrated telecommunications and technology services to businesses and consumers in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee through its three operating subsidiaries, FiberNet, BTI and DeltaCom. ITCD delivers a comprehensive suite of voice and data communications services, including local exchange, long distance, enhanced data, Internet, collocation, and managed services, and sells customer premise equipment to end-user customers. ITCD offers these services primarily over its owned network facilities and also uses leased network facilities to extend its market coverage. In addition, ITCD owns, operates, and manages an extensive fiber optic network with significant transmission capacity that it uses for its own voice and data traffic and selectively sells to other communications providers on a wholesale basis. ITCD also sells customer premises equipment to end-user customers. Currently, Welsh, Carson, Anderson & Stowe VIII, L.P., WCAS Capital Partners III, L.P., and WCAS Information Partners, L.P. (collectively, “Welsh Carson”) together hold over 50 percent of the voting power represented by the outstanding shares of ITCD’s common and preferred stock. The Welsh Carson entities are private equity investment funds, and are not commonly owned, but ultimately are managed and controlled by the same group of individuals, all of whom are U.S. citizens.<sup>5</sup> Welsh Carson also holds majority interests in Centennial Communications Corporation (Centennial) and Valor Telecommunications L.L.C. (Valor).<sup>6</sup> Also, 20 percent of the voting power represented by the outstanding shares of ITCD’s common and preferred stock is held collectively by M/C Venture Partners V, L.P., Media/Communications Partners III Limited Partnership, Chestnut Venture Partners, L.P. (all organized under Delaware law), and M/C

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<sup>4</sup> FDN Inc. and SDN Inc. do business as “FDN Communications” in these markets. SDN Inc. provides international telecommunications services under FDN Inc.’s section 214 authorization.

<sup>5</sup> The managing members are Patrick J. Welsh, Russell L. Carson, Bruce K. Anderson, Robert A. Minicucci, Anthony J. deNicola, Paul B. Queally, D. Scott Macksey, Sanjay Swani, Jonathan M. Rather, John D. Clark, Thomas E. McInerney, James R. Matthews, John Almeida, Jr., and Sean M. Traynor.

<sup>6</sup> Centennial is a provider of wireless rural telephone systems in the U.S., and a provider of integrated communications services in the Caribbean, including Puerto Rico and the U.S. Virgin Islands. Valor is an independent local exchange company offering local, long distance, wireless, and information services primarily in rural areas in Texas, Oklahoma and New Mexico. To the extent Welsh Carson is considered a co-applicant here and its majority interest in Valor renders Welsh Carson a “dominant carrier” under section 63.03(b) of the rules, this Application qualifies for streamlined processing under section 63.03(b)(2)(ii), because FDN operates exclusively outside of the geographic areas in which Valor is dominant in its provision of local telephone service. 47 C.F.R. § 63.03(b)(2)(ii).

Investors, L.L.C. (organized under Massachusetts law).<sup>7</sup>

On September 8, 2004, ITCD and FDN Inc. entered into a Merger Agreement pursuant to which ITCD agreed to acquire all of the outstanding shares of capital stock of FDN Inc. in exchange for shares of newly-issued common stock in ITCD. To effectuate the transaction, ITCD has created a new wholly-owned subsidiary that will be merged with and into FDN Inc. Upon consummation of the proposed merger, the separate existence of ITCD's new wholly-owned subsidiary will cease, and FDN Inc. will continue in existence as the surviving corporation in the merger. As a result of this proposed transaction, FDN Inc. will become a wholly-owned direct subsidiary of ITCD. Because ITCD will acquire FDN Inc. in exchange for newly-issued shares of ITCD common stock, Welsh Carson's ownership interest in ITCD will be diluted by the proposed transaction, causing Welsh Carson's ownership interest in ITCD to decline to below 50 percent. In addition, because ITCD's issuance of new common stock will reduce Welsh Carson's ownership interest in ITCD, the proposed transaction will result in a transfer of control of ITCD and its three licensed operating subsidiaries, Interstate FiberNet, Inc. ("FiberNet"), Business Telecom, Inc. ("BTI"), and ITC^DeltaCom Communications, Inc. ("DeltaCom") – from Welsh Carson to the shareholders of ITCD. Welsh Carson currently owns a controlling majority of the voting power represented by the outstanding share of ITCD common stock and preferred stock. Because ITCD will acquire FDN Inc. in exchange for newly-issued shares of ITCD common stock, Welsh Carson's voting ownership interest in ITCD will become diluted as a result of this proposed transaction and will decline to approximately 41 percent. Consummation of the transaction contemplated by the Merger Agreement therefore will result in a change in control of both FDN and ITCD, because Welsh Carson will no longer own a controlling majority of the voting power represented by the outstanding shares of ITCD common stock and preferred stock.

The Applicants state that the proposed transaction is in the public interest, convenience, and necessity because it will combine the resources, assets, and customer bases of the ITCD operating subsidiaries and FDN to create a stronger competitor in the marketplace for local exchange, interexchange, and international telecommunications and other services. Customers will benefit from the combined company's improved resources and assets, which will help ensure continuity of service and enhance the ability of each of the operating subsidiaries to offer a broader range of innovative product and services to customers. The parties expect that this proposed transaction (together with ITCD's related acquisition of NT Corporation)<sup>8</sup> will contribute to annualized cost savings for the combine company of approximately \$25 to \$30 million within 18-24 months of the transaction closings, with \$20 million in cost savings

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<sup>7</sup> All but two of the members/shareholders of each of these entities are U.S. citizens. The U.S. members are James F. Wade, Peter H.O. Claudy, David D. Croll, Matthew J. Rubins, John W. Watkins, John O. Van Hooser, John P. Ward, Neil N. Sheth, Joseph S. Monaco, Russell T. Pyle, Gillis S. Cashman, Stephen F. Gormley, Christopher S. Gaffney, and John G. Hayes. The two alien members, Peter A. Schober, an Austrian citizen, and Andrin Bachmann, a Swiss citizen, do not hold any voting rights or indirect voting interest in ITCD, and their collective indirect equity ownership interest in ITCD is *de minimus*.

<sup>8</sup> See *supra* n.2.

expected to be realized within the first 12 months of the closings. The proposed transaction therefore will strengthen the ability of the post-merger company to offer services in competition with other providers, including incumbent local exchange carriers, in their operating areas.

## **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before November 1, 2004** and **reply comments on or before November 8, 2004**.<sup>9</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer assets on the 31<sup>st</sup> day after the date of this notice.<sup>10</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail,

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<sup>9</sup> See 47 C.F.R. § 63.03(a).

<sup>10</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, [www.bcpweb.com](http://www.bcpweb.com); phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-B418, Washington, D.C. 20554; e-mail: [alexis.johns@fcc.gov](mailto:alexis.johns@fcc.gov);
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: [terri.natoli@fcc.gov](mailto:terri.natoli@fcc.gov);
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12<sup>th</sup> Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (6) James Bird, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Alex Johns at (202) 418-1167.

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